



7/25/05

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#49

In re Application of:  
Jay French, Roy Janson  
Serial No. 08,884,546  
Filed: 6/27/97  
For: HYDROTHERAPY AND EXERCISE  
DEVICE WITH INTEGRATED LIFT  
AND TREADMILL MEANS

Group Art Unit: 3302  
Examiner: Reichard, L.

RECEIVED

JUL 27 2005

OFFICE OF PETITIONS

Mail Stop Petition  
Commissioner For Patents  
Alexandria, VA 22313-1450

Attn: Ed Tannouse

REQUEST FOR RECONSIDERATION OF NOTICE OF ABANDONMENT DATED  
NOVEMBER 26, 2004, or in the alternative,  
PETITION TO REVIVE UNINTENTIONALLY  
ABANDONED APPLICATION UNDER 37 C.F.R. 1.137(b)

07/26/2005 MAHMED1 00000033 08884546

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750.00 OP

This request is being refiled per conversation with Mr. Ed Tannouse of the Petitions Office.

Applicant has received and reviewed the Notice of Abandonment dated November 26, 2004 and respectfully requests reconsideration and rescinding of the Notice of Abandonment. Applicant has carefully reconstructed and examined the events, including those going back to 1999,

1. The March 1999 alleged Abandonment. Applicant believes that the finding that the application was abandoned on March 15, 1999 for failure to provide final drawings in response to the Notice of Allowance issued December 15, 1998, is in error. This application was prosecuted through several CIP's filed in 1999 -2002, with several Notices of Allowance issued. Applicant was never advised or notified

that years earlier, years before the office and the applicant were exchanging numerous actions and responses, that the application was somehow abandoned on March 15, 1999.

The March 15, 1999 date referred to by the office is apparently in reference to a December 15, 1998 Notice of Allowance that gave three months (to March 15, 1999) to submit formal drawings and the issue fee.

However, the record shows that a new Notice of Allowance was issued on February 2, 1999, before the March 15 deadline, which new notice set new deadlines. This February 2, 1999 notice, a copy of which is attached as Exhibit A, specifically set a new three month period (deadline Monday, May 3, 1999) in which to pay the issue fee and provide the formal drawings. Applicant properly and timely responded on May 3, 1999, with a CIP and filing fee. There was no abandonment. The case continued to be prosecuted with numerous office actions thereafter, for three years. In fact, although the Office issued a Notice of Abandonment on June 17, 1999, it subsequently filed a Notice of Rescinded Abandonment on July 8, 1999, presumably taking into consideration all prior acts. The office then issued a new Notice of Allowance on July 30, 1999, and subsequent Notices of Allowance thereafter following properly filed CIP's, up until the last CIP that was filed on April 23, 2002.

This application was actively prosecuted after 1998, and all the deadlines were met. The office clearly either impliedly, or

actually, rescinded any notice of abandonment regarding the March of 1999, finding impliedly by all of its actions that the February 2, 1999 Notice of Allowance had in fact set new deadlines. This would be the common sense and practical view, else the efforts of the patent office and the applicant over the next several years in prosecuting the application would seem unnecessarily fruitless, and the significant sums paid in filing fees meaningless. Taking the logic one step further, at any time had the issue fee been paid and the patent issued on any one of the several Notices of Allowance issued in 2000 through 2002, then the patent that issued would have been valid; one would not likely successfully argue that the patent was void because there was an abandonment in 1999. Likewise, all the actions of the patent office in treating this application as pending, responding to CIP's of the Applicant and issuing Notices of Allowance, should be deemed to have constituted a finding that there was never an abandonment, or at minimum, an implied notice of rescinding of abandonment in March of 1999, and in any case, should be deemed a finding that the deadline dates in March of 1999 based on the older (December 1998) Notice of Allowance were overridden by the then more recent Notice of Allowance dated February 2, 1999. Applicant requests a reconsideration of the finding that the Application was abandoned in March of 1999, and that the Notice of Abandonment be rescinded, and that the application be opened to consider the pending CIP filed April 23, 1002.

2. The CIP Filed April 23, 2002. As to the last CIP effectively filed on April 22, 2002, and as the office is aware, applicant has been attempting for quite some time to determine the status. Applicant received no notice in response, no return of the CIP, no return of the check, and no notice of nonacceptance. The application simply went dark so to speak. After numerous attempts to determine the status, including conferences with several individuals at the office over the past two years, including Larry Schwartz and Edward Tannouse, who has been most helpful in trying to track down the file and determine the status (see letter to PTO dated July 20, 2004, attached as Exhibit B), applicant learned in the summer of 2004 phone call from the patent office that there was a Notice of Abandonment 'still sitting in the file' that 'never went out' according to the Petitions Office, and that a followup letter would be forthcoming. On September 15, 2004, a followup letter came, a Notice of Abandonment, which was later itself revoked as in error. Then the subject letter of Abandonment was issued November 26, 2004. It was suggested that the CIP filed April 23, 2002, was not considered as not having the sufficient filing fee.

Applicant respectfully disagrees that the filing fee was insufficient. It will be seen that the applicant paid a fee in excess of the amount actually due. The fee paid On April 23, 2002 with the CIP was incorrectly calculated based on the presence of 26 claims. In fact, only 6 claims (27-32) were filed and active in the

CIP's. All other claims were cancelled, confirmed by the Office Action dated October 10, 1997 (Paper Number 10). Ever since, only 6 claims have been filed in each succeeding CIP, with no independent claims in excess of three, and the examiner even noted in each Notice of Allowance issued that only claims 27-32 were at most ever pending. Consequently, it will be seen that the fee due was \$490.00 with the CPA filed on April 23, 2002. Applicant submitted a check with the CIP on April 23, 2002, of \$614.00, in excess of the amount actually due. Although the Application was not deemed abandoned due to any underpayment according to the November 26, 2004 Notice of Abandonment, applicant seeks to clarify that the CIP filed April 23, 2002, is still properly before the office for consideration.

Consequently, applicant respectfully requests that the finding of Abandonment as of March 15, 1999, be reconsidered and set aside, that the application be reopened to consider the CIP filed April 23, 2002, along with the formal drawings enclosed with this document.

It is applicant's hope that the office will clearly see the simple reopening of the file to consider the April 23, 2002 CIP as the most correct, simplest, and fairest, procedure given that prosecution of the application clearly proceeded forward for several years, and that applicant should be able to rely on the most recent (February 2, 1999) of the two Notice of Allowances pending; certainly where there is some confusion as to which date applies, and given the prosecution went forward for several years, with numerous office

actions thereafter and thousands paid in filing fees by the applicant, the benefit of the doubt should be a finding of no abandonment.

3. In the alternative, applicant requests that the application be revived, as applicant clearly did not intend to abandon the application, and any delay was clearly unintended, in accordance with 37 C.F.R. 137 (b). The entire delay in filing the required Reply for the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137 (b) was unintentional. The Petition fee is enclosed in a separate check, although applicant respectfully requests its return should the office determine that no abandonment occurred. The reply to be considered with this alternative Petition for Revival, is the May 3, 1999 CIP if the reconsideration request is denied, otherwise the April 23, 2002, CIP.

Respectfully submitted,

Date: 7/21/05

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CERTIFICATE OF MAILING

I hereby certify that this Request and Petition with attached Exhibits and original drawings, and filing fees of \$ 750 is being sent by U.S. Express Mail Post Office to Addressee in an envelope addressed to:

Mail Stop Petition  
Commissioner For Patents  
Alexandria, VA 22313-1450

on 7/21/05, 2005.

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